IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTINA V. WIMBERLY,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	**NO. 05-2713**
	:	
SEVERN TRENT SERVICES, INC.	**:**	
and SEVERN TRENT WATER	**:**	
PURIFICATION, INC.,	**:**	
Defendants.	**:**	

OPINION

STENGEL, J. **August 22, 2006**

This case involves claims of race, sex, and age discrimination. Plaintiff, Christina Wimberly, an African-American woman born on December 12, 1946, alleges Severn Trent Services, Inc. ("STS, Inc.") and Severn Trent Water Purification, Inc. ("Severn Trent") (collectively "Defendants"),[1] discriminated against her in employment actions that occurred between October 2002 and January 2004. Defendants have moved for summary judgment on all counts of Plaintiff's Amended Complaint.

BACKGROUND

Severn Trent manufactures and sells water disinfectant and filtration equipment to municipalities and private companies. This cause of action arose from events in Severn Trent's facility in Colmar, Pennsylvania. The Colmar facility has two business units: (1) Gas Feed, which generates a majority of the facility's revenues and profits, and (2) Engineered Products & Services ("EP&S").

[1] Both Defendants are a subsidiary of Severn Trent, Plc, a British company.

Severn Trent hired Plaintiff on December 1, 1998. Joseph Walsh ("Walsh"), Manager of Materials Planning/Procurement at the time, offered Plaintiff the position of Senior Purchasing Agent. The position reported directly to Walsh. Walsh is a Caucasian man, born on March 16, 1945. Walsh previously supervised Plaintiff at their former employer, CMS Gilbreth. Plaintiff accepted the position with Severn Trent because she "felt comfortable working for Walsh and because she believed he would promote her to purchasing manager, as he promised." Pl.'s Resp. to Defs.' Statement of Undisputed Facts ¶24.

In May 1999 Walsh promoted Plaintiff to Purchasing Manager. The new position included an increase in salary and an increase in responsibility. As Purchasing Manager, Plaintiff oversaw the purchasing of materials for all of Severn Trent's product lines. In addition, she supervised the two other members of the Purchasing Department, Don Gerhart ("Gerhart"), a Caucasian man born on February 10, 1943, and Ellin Stadnycki, a Caucasian woman born on August 5, 1961.

On or about October 4, 2002, Walsh reassigned Plaintiff so that she reported directly to Joseph Tischler ("Tischler"), a Caucasian man born on December 20, 1965. The reassignment did not affect Plaintiff's title or salary; however, as a result of the reassignment, Plaintiff no longer was included in management meetings. Tischler held the position of Materials Manager at the time of the reassignment. Severn Trent hired Tischler in a non-managerial position at the same time as Plaintiff. Severn Trent also

promoted Tischler to manager at the same time as Plaintiff.

In July 2003, Severn Trent reorganized its EP&S unit. As part of the reorganization plan, Severn Trent decided to dedicate a Purchasing Department employee to the EP&S unit. Severn Trent chose Plaintiff to fill the new role. As a result of the transfer to EP&S, Plaintiff's title changed from Purchasing Manager to Senior Purchasing Manager, she no longer supervised any other employees, and she lost her entitlement to management bonuses. Plaintiff's salary remained unchanged.

In the last quarter of 2003, the EP&S unit experienced a significant decline in its revenue and earnings. As a result, Severn Trent decided to eliminate nine positions at the company, effective January 14, 2004, to reduce costs. Plaintiff's position was eliminated. Of the other eight employees to lose their jobs, seven are Caucasian and one is Asian, five are men and three are women, and only one was younger than 40. Plaintiff was the only member of the Purchasing Department to be laid off.

Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on October 30, 2003. On March 19, 2004, Plaintiff filed an Amended Charge of Discrimination with the EEOC to incorporate her termination from Severn Trent. The EEOC filed a copy of the charge with the Pennsylvania Human Relations Commission ("PHRC"). Plaintiff initiated this case on June 8, 2005, and filed an amended complaint on June 14, 2005 ("Amended Complaint"). Plaintiff alleges race and sex discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42

U.S.C. §§ 2000e et seq. ("Title VII"), race discrimination under 42 U.S.C. § 1981 ("§ 1981"), age discrimination under the Age Discrimination in Employment Act , 29 U.S.C. §§ 621 et seq. ("ADEA"), and race, sex, and age discrimination under the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. §§ 951 et seq. ("PHRA") against Defendants. Defendants moved for summary judgment on April 7, 2006, on the race, sex, and age discrimination claims, with respect to the following actions taken by Defendants: (1) retaining Plaintiff in a position subordinate to Tischler from October 2002 to July 2003; (2) transferring Plaintiff to the EP&S business unit in July 2003; and (3) terminating Plaintiff's position in January 2004.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

In this case, Defendants bear the initial responsibility of informing the court of the basis for their motion and identifying those portions of the record that they believe demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477

U.S. 317, 322 (1986). While Plaintiff bears the burden of proof on a particular issue at trial, Defendants' initial Celotex burden can be met simply by pointing out to the court that there is an absence of evidence to support Plaintiff's case. Id. at 325. After Defendants have met their initial burden, Plaintiff's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if Plaintiff fails to rebut Defendants' assertions by making a factual showing sufficient to establish the existence of an element essential to her case, and on which she will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to Plaintiff. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. If Plaintiff has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the Court cannot credit Defendants' version of events against Plaintiff, even if the quantity of Defendants' evidence far outweighs that of Plaintiff's. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

DISCUSSION[2]

I. STS, Inc. as a Defendant

Initially, Defendants move to grant STS, Inc. summary judgment on all counts of the Amended Complaint because STS, Inc. is not a proper party to this cause of action.

[2]I have looked at the record in the light most favorable to the nonmoving party, giving that party the benefit of all reasonable inferences derived from the evidence.

Defendants contend STS, Inc. was not Plaintiff's employer. Plaintiff counters that STS, Inc. is the parent company of her employer, Severn Trent, and, therefore, is a properly named defendant.

Title VII and the ADEA create causes of actions only against employers, employment agencies, labor organizations, and training programs. See Fantazzi v. Temple Univ. Hosp., Inc., No. 00-CV-4175, 2002 U.S. Dist. LEXIS 16269, at *8 (E.D. Pa. August 22, 2002). PHRA creates causes of action for both employers and non-employers. See id. at *8 n.4. Plaintiff asserts each Defendant was an "employer" of Plaintiff under the applicable statutes. Plaintiff, as part of her prima facie case, carries the "burden of proving th[is] most essential element[] of her Title VII claims - employment by defendants." Pacheco v. Kazi Foods of N.J., Inc., No. 03-CV-02186, 2004 U.S. Dist. LEXIS 11280, at *7 (E.D. Pa. April 7, 2004).

It is undisputed that Plaintiff was an employee of Severn Trent. See Defs.' Statement of Undisputed Facts in Supp. for Mot. for Summ. J. ("Defs.' State. of Undis. Facts") ¶23; Am. Compl. ¶10.[3] In order to hold STS, Inc. liable for the actions of Severn Trent, Plaintiff must present evidence that these two separate corporate entities were "'so interrelated and integrated in their activities, labor relations, and management'" that they should be regarded as a single employer for Title VII, § 1981, the ADEA, and PHRA

[3]Plaintiff was hired by Capital Controls Company, Inc. and eventually became an employee of Severn Trent. See Pl. Dep. 12-13. However, no evidence has been presented to explain the exact relationship between Capital Controls Company, Inc. and Severn Trent.

purposes. Marzano v. Computer Sci. Corp., 91 F.3d 497, 513 (3d Cir. 1996) (quoting Ratcliffe v. Ins. Co. of N. Am., 482 F. Supp. 759, 764 (E.D. Pa. 1980)). The factors this court should consider to determine if an integrated enterprise existed between STS, Inc. and Severn Trent are: "1) the interrelation of operations; 2) common management, directors, and boards; 3) centralized control of labor relations; and 4) common ownership and financial control." See Fantazzi, 2002 U.S. Dist. LEXIS 16269, at *9.

Defendants contend Plaintiff has produced no evidence to justify application of the integrated enterprise theory. Plaintiff asserts Severn Trent is a subsidiary of STS, Inc. Am. Compl. ¶9. Her basis for this assertion is that it was "common knowledge" in the workplace that STS, Inc. was the parent company of Severn Trent. Pl. Dep. 13-14. Plaintiff does not support this "common knowledge" with factual proof of the corporate structure of either of the two entities. The only support for her contention that a parent-subsidiary relationship existed between the two Defendants is reference to the records of the Pennsylvania Corporation Bureau ("Bureau"). Pl. Mem. of Law in Opp. to Defs.' Mot. for Summ. J. ("Pl. Mem. of Law"), at 41 n.9. The information on file with the Bureau, however, does not establish any connection between the two Defendants.

Regardless of the existence of a parent-subsidiary relationship between the two Defendants, Plaintiff provides minimal evidence that addresses the four factors listed in Fantazzi. The only evidence in the record that can support her claim of an integrated enterprise is the severance letter she received on January 14, 2004. Pl. App. to Pl.'s Resp.

to Defs.' State. of Undisp. Facts, Ex. A. The letter is on "Severn Trent Service" letterhead, with Exhibit A to the letter discussing "benefits under the terms of the Severn Trent Services, Inc. Severance Place." The existence of this one letter may provide some evidence of centralized control of labor relations, but it does not demonstrate an interrelation of operations, common management, or common ownership and financial control between the two Defendants.

STS, Inc. is not an employer of Plaintiff under Title VII, § 1981, the ADEA, or PHRA, and Plaintiff has failed to adduce evidence to create a genuine issue of material fact regarding the interrelatedness of the two entities. Accordingly, Defendants' summary judgment motion to dismiss all Plaintiff's claims against STS, Inc. will be granted.

II. Overview of Claims Against Severn Trent

The parties agree that no direct evidence exists of disparate treatment discrimination. Therefore, the three part burden-shifting analysis of McDonnell Douglas applies to this summary judgment motion on Plaintiff's race, sex, and age discrimination claims under Title VII, § 1981, the ADEA, and the PHRA. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Jones v. School Dist., 198 F.3d 403 (3d Cir. 1999); Fuentes v. Perksie, 32 F.3d 759, 763 (3d Cir. 1994). See also Weston v. Pennsylvania, 251 F.3d 420, 425 n.3 (3rd Cir. 2001) (holding claims under the PHRA are analyzed under the same framework as Title VII claims); Schurr v. Resorts International Hotel Inc., 196 F.3d 486, 499 (3d Cir. 1999) (holding that the elements of employment

discrimination under Title VII are identical to the elements of discrimination under § 1981); Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 646 (3d Cir. 1998) (holding claims under the ADEA are analyzed under the McDonnell Douglas framework).

Under the first part of McDonnell Douglas, the plaintiff must establish a prima facie case of discrimination by a preponderance of the evidence. If plaintiff meets this initial burden, "the burden shifts to the employer to 'articulate some legitimate, nondiscriminatory reason for the employee's rejection.' If the defendant meets this burden, the presumption of discriminatory action raised by the prima facie case is rebutted. The plaintiff then must establish by a preponderance of the evidence that the employer's proffered reasons were merely a pretext for discrimination, and not the real motivation for the unfavorable job action." Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003) (quoting McDonnell Douglas, 411 U.S. at 802) (citations omitted).

III. Race Discrimination Claims under Title VII, § 1981, and the PHRA

A. Plaintiff's Reporting Change in October 2002 - Title VII, § 1981, and PHRA

1. Title VII[4]

a. Statute of Limitations

Under Title VII, a plaintiff ordinarily must file a charge of employment

[4]Under the statutory language of Title VII, "[i]t shall be an unlawful employment practice for an employer to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

discrimination with the Equal Employment Opportunity Commission ("EEOC") "within 180 days after the alleged unlawful employment practice occurred." 42 U.S.C. § 2000e-5(e)(1). In a state with an agency with the authority to investigate employment discrimination claims, "a charge under Title VII must be filed with the EEOC within 300 days of when the alleged unlawful employment practice occurred." Seredinski v. Clifton Precision Prods. Co., 776 F.2d 56, 61 (3d Cir. 1985). See also Zdziech v. DaimlerChrysler Corp., 114 Fed. Appx. 469, 470 n.1 (3d Cir. 2004). "Pennsylvania is a deferral state, as the PHRC's jurisdiction substantially overlaps with the EEOC's." Seredinski, 776 F.2d at 61. In this case, since EEOC forwarded Plaintiff's charges to the PHRC, Plaintiff is entitled to the 300 day filing period. See id. at 61-62 (construing 42 U.S.C. § 2000e-5(e)(1)).

b. Calculation of Applicable Statute of Limitations

In Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002), the Supreme Court articulated how to determine when the statute of limitations for adverse employment actions begins to run. "[D]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180- or 300-day time period after the discrete discriminatory act occurred. . . . Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination

and each retaliatory adverse employment decision constitutes a separate actionable unlawful employment practice." Id. at 114.

c. Plaintiff's Reporting Change as a Discrete Act

Severn Trent argues that more than 300 days passed between the time Plaintiff was placed under Tischler's supervision and when Plaintiff filed her EEOC charge reporting the alleged adverse employment action. Therefore, Plaintiff's discrimination claims relating to the reporting change are time barred.

Plaintiff contends that "by *retaining* Plaintiff in a position organizationally subordinate to Tischler, . . . Defendants discriminated against Plaintiff . . . in the terms, conditions and privileges of her employment." Pl. Mem. of Law, at 39. She claims that reporting to Walsh was a material term or condition of her employment. Severn Trent altered the condition when she was required to report to Tischler. Plaintiff also argues that between October 2002 and July 2003, when she was reporting to Tischler, she requested to be returned to Walsh's supervision. Pl. Mem. of Law, at 37. Each such request was denied by her employer and each denial was a separate and discrete act. The last request was in April 2003.

Plaintiff's reporting change occurred on or about October 4, 2002. Plaintiff filed her charges with the EEOC on October 30, 2003, well over 300 days after Plaintiff was informed of the change. The change in Plaintiff's reporting requirement falls into the category of employment actions the Supreme Court listed as "discrete discriminatory

acts," i.e., "termination, failure to promote, denial of transfer, or refusal to hire." Morgan, 536 U.S. at 114. The reporting change, like the events listed, was a specific, distinct event that occurred on a given day. It was "a separate actionable unlawful employment practice" and the clock to file a charge with the EEOC relating to that event began to run on October 4, 2002. Plaintiff failed to file the charge within the statutorily required 300 day period.

Plaintiff tries to salvage this claim by arguing that each denial of her request to return to Walsh's supervision was a new discriminatory discrete act and gave rise to a new limitation period.[5] The Third Circuit has rejected a similar argument before. "The repeated refusal of an employer to reinstate an employee to a formerly held position . . . does not give rise to a new claim of discrimination. The failure to act upon receipt of a letter requesting reinstatement is not a discrete act of discrimination and does not restart the statute of limitations. . . . To permit a person to reset the statutory requirements for the timely filing of a complaint merely by writing a new letter to his former employer would clearly vitiate the intent behind the 300-day time limit. Zdziech v. DaimlerChrysler Corporation, 114 Fed. Appx. 469, 472 (3d Cir. 2004) (discussing Americans with Disabilities Act claim[6] arising out of employer placing plaintiff on disability leave). See

[5]Evidence of these requests are notes Plaintiff alleges she took contemporaneously with her requests. Defendants argue the notes are inadmissible hearsay and therefore cannot form the basis for Plaintiff's opposition to the summary judgment motion. The admissibility of the notes do not need to be determined by the Court because Plaintiff's alleged requests are not discrete acts and are not actionable.

[6]Under 42 U.S.C.§ 12117, the enforcement provisions of Title VII, namely § 2000e-5(e), govern the enforcement of the ADEA.

also Hart v. J.T. Baker Chem. Co., 598 F.2d 829, 833 (3d Cir. 1979) (noting that the "primary consideration underlying statutes of limitations is that of fairness to the defendant"). Here, Plaintiff's repeated requests to Severn Trent to return to Walsh's supervision cannot successfully restart the limitation period. The requests relate to the employment action that occurred in October of 2002. Plaintiff's continuos requests did not give present effect to her employer's past discriminatory act.

Plaintiff's claims relating to her reporting change are time-barred under § 2000e-5(e). Her rights under Title VII fully ripened on or around October 4, 2002, when Severn Trent reassigned her to report to Tischler. Because Plaintiff failed to file a charge with the EEOC within the 300 day statutory time frame, Severn Trent is entitled to summary judgment on Plaintiff's Title VII race discrimination claim relating to the October 4, 2002 reporting change.

2. Section 1981 Claim

Section 1981 states in relevant part: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." 42 U.S.C. § 1981(a). Plaintiff's § 1981 cause of action arises from her employment relationship with Severn Trent. It is brought under the right

"to make and enforce contracts," which has "broad applicability beyond the mere right to contract." Mahone v. Waddle, 564 F.2d 1018, 1028 (3d Cir. 1977).

a. Statute of Limitations

Plaintiff asserts that her § 1981 claim relating to her reporting change was timely filed. She contends 28 U.S.C. § 1658 is the applicable statute of limitation. Therefore, she had four years to bring suit under § 1981 for Defendants "retaining Plaintiff in a position organizationally subordinate to Tischler." Severn Trent puts forth no argument to dispute Plaintiff's claim.

Section 1658 states: "Except as provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action." 28 U.S.C. § 1658(a). With regard to § 1981, § 1658's applicability is only to the 1991 Amendment to § 1981.[7] The 1991 Amendment redefined "make and enforce contracts" so it included "termination of contracts and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). See Baldwin v. Township of Union, Civ. No. 02-1822, 2005 U.S. Dist. LEXIS 37534, at *7-8 (D.N.J. Dec. 29, 2005). The 1991 Amendment was "deemed necessary only because the pre-existing § 1981(a) statutory right to make and enforce contracts did not protect against conduct that occurred after the formation of the

[7]See Jones v. R. R. Donnelley & Sons Co., 541 U.S. 369, 381 (2004) ("An amendment to an existing statute is no less an 'Act of Congress' than a new, stand-alone statute. What matters is the substantive effect of an enactment-the creation of new rights of action and corresponding liabilities-not the format in which it appears in the Code.").

contract." Id. Accordingly, a cause of action that arises after the formation of the employment agreement falls within the purview of the 1991 Amendment and § 1658's statute of limitation.

In this action, Plaintiff's claim of racial discrimination in retaining her in her position subordinate to Tischler falls under the post-1990 § 1981(b) amendments. It relates to an action that occurred after the formation of the employment agreement between Plaintiff and Severn Trent. Therefore, the four-year statute of limitation of § 1658 applies. The reporting change occurred on October 4, 2002. Plaintiff commenced this action on June 8, 2005, well within the four-year time limit.

b. Plaintiff's Prima Facie Case

Plaintiff's disparate treatment race discrimination claims under § 1981 require the application of the McDonnell Douglas framework. See Langley v. Merck & Co., No. 05-3205, 2006 U.S. App. LEXIS 14958, at * 7 n.2 (3d Cir. June 15, 2006). Initially, Plaintiff must establish a prima facie case of discrimination. A prima facie case requires a showing that: "(1) she is a member of a protected class; (2) she satisfactorily performed the duties required by her position; (3) she suffered an adverse employment action; and (4) either similarly-situated non-members of the protected class were treated more favorably or the adverse job action occurred under circumstances that give rise to an inference of discrimination." Id. at *4 (citing Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003)).

The first two elements of Plaintiff's prima facie case are not disputed. She is an African-American and her qualifications as the Purchasing Manager are not in dispute. However, Plaintiff has failed to establish that the reporting change was an adverse employment action under the third element.

In her Amended Complaint, Plaintiff contends the adverse employment action occurred "[b]y retaining Plaintiff in a position organizationally subordinate to Tischler." In Plaintiff's reply brief to the Defendants' motion for summary judgment, she explains that a term and condition of her employment was reporting directly to Walsh. She accepted the job with Severn Trent, and turned down another employment opportunity, because Walsh was to be her supervisor. Finally, in Plaintiff's deposition, she contends the reporting change was a demotion because her reporting status was dropped down a level in the hierarchy of Severn Trent. Severn Trent counters Plaintiff's arguments by suggesting that reporting to Tischler did not alter any material terms of Plaintiff's employment because her title, compensation, and responsibilities remained unchanged.

An adverse employment action is "one which is 'serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment.'" Cardenas v. Massey, 269 F.3d 251, 263 (3d Cir. 2001) (quoting Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997)). "Minor actions, such as lateral transfers and changes of title and reporting relationships, are generally insufficient to constitute adverse employment actions." Langley v. Merck & Co., No. 05-3205, 2006 U.S. App.

LEXIS 14958, at * 7 (3d Cir. June 15, 2006).

In this case, regardless of how Plaintiff classifies the employment action, no evidence has been put forward to demonstrate that the position she held with Severn Trent after the reporting change was inferior to the position she held before the change. It is undisputed that Plaintiff maintained the same title, compensation, benefits, and responsibilities after the change. Plaintiff makes no claim that Tischler created an unfavorable work environment. In October 2002, Tischler was the Materials Manager at Severn Trent. Therefore, the reporting change resulted in a return to the structure that existed less than six months earlier when Walsh was the Materials Manager, i.e., the Purchasing Department reporting to the Materials Manager.[8] The only possible negative impact of this employment action was Plaintiff no longer was included in management meetings. Such a consequence is insufficient to make an employment action adverse.

In addition, Plaintiff's deposition and hiring letter fail to indicate that reporting to Walsh was a material term or condition of her employment. In response to a question at her deposition asking why she accepted the position at Severn Trent, Plaintiff responded: "Perfectly candid, I knew Joe Walsh. I believed he would promote me to purchasing manager." Pl. Dep. 48. In the confirmation letter sent to Plaintiff by Severn Trent, regarding Severn Trent's offer of employment, the letter stated: "[T]his position reports to Joe Walsh, the Materials Manager." Defs.' App. to Defs.' State. of Undis. Facts, Ex. G.

[8]Walsh was promoted from Materials Manager to Director of Operations in June 2002. At the same time, Tischler's title was changed to Materials Manager.

The letter does not indicate that Plaintiff required Walsh to be her supervisor as a condition of employment.

Although Plaintiff may have disagreed with or disliked the decision, Plaintiff has failed to produce some evidence from which a reasonable factfinder could conclude the reporting change qualifies as an adverse employment action. "Minor or trivial actions that merely make an employee unhappy are not sufficient" to qualify as an adverse employment action, "for otherwise every action that an irritable, chip-on-the shoulder employee did not like would form the basis of a discrimination suit." Mondzelewski v. Pathmark Stores, Inc., 162 F.3d 778, 787 (3d Cir. 1998) (internal quotations omitted) (discussing discrimination in the context of the Americans with Disabilities Act) . Therefore, I will grant Severn Trent's motion for summary judgment on Plaintiff's § 1981 claim relating to her reporting change in October of 2002.

3. PHRA Race Claim

"To bring suit under the PHRA, a plaintiff must first have filed an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. If a plaintiff fails to file a timely complaint with the PHRC, then he or she is precluded from judicial remedies under the PHRA." Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997) (citing 43 Pa. Cons. Stat. §§ 959(a), 962). A plaintiff satisfies his or her filing requirement under the PHRA if the EEOC transmits the claim to the PHRC. Id. at 926 n.12.

As noted above, Plaintiff filed her initial charge of discrimination pertaining to her reporting change with the EEOC on October 30, 2003. Although the record is unclear as to when EEOC forwarded Plaintiff's charge to the PHRC, see Am. Compl. ¶¶100, 101, the earliest possible date was October 30, 2003. In other words, a complaint was not filed with the PHRC for over a year after the alleged act of discrimination. Therefore, Plaintiff's reporting change falls outside the 180 day statutory period established by the PHRA. The employment action is time-barred from forming a basis for a racial discrimination claim under the PHRA.

In addition, "[c]laims of race discrimination under the Pennsylvania Human Relations Act are analyzed under the same framework as a Title VII claim, 'as Pennsylvania courts have construed the protection of the two acts interchangeably.'" Woodard v. PHB Die Casting, No. 04-141(Erie), 2005 U.S. Dist. LEXIS 28673, at *25-26 (D. Pa. Nov. 18, 2005) (quoting Weston v. Pennsylvania, 251 F.3d 420, 425 n.3 (3rd Cir. 2001)). Therefore, Plaintiff's argument that each request to return to Walsh's supervision was a discrete discriminatory act with a new statute of limitation cannot succeed for the same reasons listed under Section III.A.1.c. above.

For the reasons stated, I will grant Severn Trent's motion for summary judgment with respect to Plaintiff's PHRA cause of action for race discrimination relating to her reporting change in October 2002.

B. Transfer of Plaintiff to EP&S unit in July 2003

1. Plaintiff's Prima Face Case

The parties do not dispute that the Court should apply the McDonnell Douglas analysis to Plaintiff's race discrimination claims relating to her transfer to Severn Trent's EP&S unit in July 2003. Under McDonnell Douglas, Plaintiff first must establish a prima facie case of race discrimination with respect to Severn Trent's decision. The first two prongs of the prima facie case are easily satisfied. Plaintiff is African-American and neither party disputes her qualifications as the Purchasing Manager.

Under the third prong, Plaintiff must demonstrate the transfer was an adverse employment action, i.e., "one which is serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment." Cardenas v. Massey, 269 F.3d 251, 263 (3d Cir. 2001) (quoting Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir. 1997)). As a result of the transfer, Plaintiff was demoted from Purchasing Manager to Senior Purchasing Manager, she was placed in a financially struggling division of the company, she no longer had employees directly reporting to her, and she no longer was entitled to management bonuses. Although Plaintiff's salary remained unchanged, the other effects of the transfer provide enough evidence from which a reasonable factfinder could conclude the transfer qualifies as an adverse employment action.

Finally, under the last prong of Plaintiff's prima facie case, Plaintiff must show "the adverse job action occurred under circumstances that give rise to an inference of

discrimination." See Langley v. Merck & Co., No. 05-3205, 2006 U.S. App. LEXIS 14958, at * 4 (3d Cir. June 15, 2006). Plaintiff argues that an inference of racial discrimination can be based on the following: (1) she was the only African-American employee in the Purchasing Department; (2) Severn Trent could have transferred Gerhart, a Caucasian man, instead of her to the EP&S unit; and (3) she heard Tischler comment after her transfer that "from now on, I am only hiring people who look like me." See Defs.' State. of Undis. Facts ¶87. If the Court views the first two factors in the light most favorable to Plaintiff, Plaintiff has raised an inference of racial discrimination.[9] Severn Trent performed the adverse employment action against a member of the protected class when a member of a non-protected group, Gerhart, was equally qualified to be transferred.[10] See Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981) ("The burden of establishing a prima facie case of disparate treatment is not onerous."); Simpson v. Kay Jewelers, Div. of Sterling, Inc., 142 F.3d 639, 646 (3d Cir. 1998) (finding that an "inference of discrimination anytime a single member of a non-protected group was allegedly treated more favorably than one member of the protected group . . . may be

[9]Since the first two factors are sufficient to raise an inference of discrimination, the Court does not need to determine the effect of Tischler's comments, if any, on satisfying the fourth prong of the prima facie case.

[10]Gerhart and Plaintiff were "similarly situated" for purposes of this comparison. They "engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or employer's treatment of them for it." Anderson v. Haverford College, 868 F. Supp. 741, 745 (E.D. Pa. 1994). Both individuals performed the same, relevant purchasing role for Severn Trent. They both purchased for the EP&S unit before the transfer. Plaintiff's manager position is not a mitigating circumstance because her lack of supervision of the other purchasing employees allowed her to be considered for the transfer. Plaintiff's multiple attempts to compare herself to Tischler are misplaced in the context of her transfer and termination. At the time of those employment actions, Plaintiff and Tischler were not "similarly situated" within Severn Trent. Tischler managed several departments, including Plaintiff's department, and supervised at least fourteen people.

acceptable at the prima facie stage of the analysis").

2. Severn Trent's Legitimate, Nondiscriminatory Reasons for Transfer

Severn Trent articulates several legitimate, nondiscriminatory reasons for Plaintiff's transfer to EP&S and meets its burden under the McDonnell Douglas framework. According to Severn Trent, Plaintiff's transfer to EP&S was part of its reorganization effort to increase EP&S's productivity. In particular, "Severn Trent decided to dedicate a member of the Purchasing Department to EP&S because project engineers previously had been doing some of their own purchasing, which was causing delays in their engineering projects and resulting in high purchasing costs." Defs.' State. of Undis. Facts ¶62. In addition, Walsh recommended Plaintiff for the EP&S purchasing position because she had experience with purchasing for EP&S and he believed her negotiating skills would help reduce costs. Id. ¶63.

3. Plaintiff's Proof of Pretext

Since Severn Trent carried its burden, the final step under McDonnell Douglas requires Plaintiff to prove the legitimate reasons offered by Severn Trent were a pretext for discrimination. In Jones v. School Dist., 198 F.3d 403 (3d Cir. 1999), the Third Circuit explained a plaintiff's burden at summary judgment with respect to this aspect of McDonnell Douglas. A plaintiff can defeat a motion for summary judgment

> by pointing to some evidence, direct or circumstantial, from which a factfinder would reasonably either: (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the

> employer's action. . . . To satisfy the first prong of . . . [the] standard, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent. Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence. . . . [A] plaintiff may satisfy this standard by demonstrating, through admissible evidence, that the employer's articulated reason was not merely wrong, but that it was so plainly wrong that it cannot have been the employer's real reason.
>
> [Under the second prong], the plaintiff also may survive summary judgment by pointing to evidence in the record which allows the fact finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action. For example, the plaintiff may show that the employer has previously discriminated against [the plaintiff], that the employer has previously discriminated against other persons within the plaintiff's protected class, or that the employer has treated more favorably similarly situated persons not within the protected class.

Jones, 198 F.3d at 413 (3d Cir. 1999) (internal citations and quotations omitted).

Under the first prong, Plaintiff asserts sufficient inconsistencies and contradictions exist in Severn Trent's nondiscriminatory reasons that this Court should deny the summary judgment motion relating to the transfer claims. First, the Purchasing Department already handled some of EP&S's purchasing. Gerhart and Plaintiff were available and placed purchase orders for EP&S engineers before the transfer. Second, Plaintiff contends the transfer was part of a scheme to eliminate her position. She alleges Walsh made comments in October 2002 that Severn Trent planned to sell or drop EP&S. Therefore, when he made the decision to transfer Plaintiff to EP&S, he knew her purchasing position would eventually be eliminated. Third, Plaintiff compares Severn

Trent's explanation for her transfer to Severn Trent's explanation for her eventual termination. In justifying Plaintiff's termination, Severn Trent claims EP&S's revenue and earnings declined substantially in the last quarter of 2003. As a result, Severn Trent decided it was necessary to reduce costs. It accomplished that goal by terminating nine positions at the company, including Plaintiff's position. Walsh decided to eliminate Plaintiff's position because "he believed that project engineers and the remaining employees in the Purchasing Department could assume Ms. Wimberly's responsibilities." Defs.' State. of Undis. Facts ¶74. Plaintiff contends this reason for her elimination contradicts Severn Trent's nondiscriminatory reason for her transfer, namely, that Plaintiff and her skills were needed in the EP&S unit to bring down the costs associated with engineer purchasing.[11]

Severn Trent explains the two decisions in question by relying on the financial numbers of EP&S. In the fiscal quarter that encompassed Plaintiff's transfer to EP&S, the unit made a profit and almost hit its targeted revenue numbers. In the next fiscal quarter, EP&S revenues were 300% below projections and it lost $200,000. See Defs.' State. of Undis. Facts ¶71. Severn Trent decided to eliminate Plaintiff's position because she earned the highest compensation among Severn Trent's purchasing employees and her termination resulted in the greatest cost savings. Although Severn Trent denies Walsh

[11]Plaintiff also bases her pretext argument on alleged contradictory statements made by Walsh regarding her change in title and on an allegation that Severn Trent desired to have Tischler, a Caucasian man, in full control of an entire unit. A fair reading of the record reveals no contradiction in Walsh's statements. In addition, the allegations relating to Tischler are nothing more than Plaintiff's unsupported beliefs.

ever made the October 2002 statement about EP&S, it contends the statement has no relevance because it was remote in time and the EP&S unit was never sold. Finally, Severn Trent points to the fact that Walsh was responsible for hiring Plaintiff and to suggest any type of discriminatory animus in his transfer decision is "preposterous."

Drawing all reasonable inferences in Plaintiff's favor, I think enough inconsistencies exist in Severn Trent's proffered reasons "that a reasonable factfinder could rationally find them unworthy of credence." First, the transfer was not necessary. At the time of the transfer, the Purchasing Department under Plaintiff's supervision was already placing orders for the EP&S unit. In addition, after Severn Trent terminated Plaintiff, Walsh determined that the Purchasing Department could handle the role previously performed by Plaintiff at EP&S.

Second, Walsh's alleged 2002 statement about the future of EP&S suggests Walsh had the inside track on decisions relating to EP&S. Walsh made the decision to transfer Plaintiff to EP&S. He also made the decision less than six months later to terminate her position at EP&S. These decisions and the short time between them further suggests Walsh knew a layoff at EP&S was imminent and chose to transfer Plaintiff to that unit so it would affect her.

Third, Severn Trent does not explain why Walsh, who had so much faith in Plaintiff's purchasing skills when he transferred her, would give her less than six months to bring down costs in the unit. If the purchasing costs of the EP&S unit were so inflated

that they required the dedication of the best purchasing employee, her termination less than six months later raises sufficient doubts as to the legitimacy of the transfer. And although Severn Trent claims her termination was due to her high compensation, a reasonable factfinder could find that a purchasing employee of Plaintiff's skills could save Severn Trent enough money to justify her salary.

Fourth, Severn Trent fails to adequately explain how the EP&S engineers' purchasing skills changed in less than six months. In July 2003, the EP&S engineers lacked the purchasing skills to cost effectively buy for the unit. In December 2003, after Plaintiff's termination, Walsh believed the engineers and the Purchasing Department could satisfactorily purchase for the EP&S unit. In reality, given that Plaintiff and Gerhart were purchasing for the EP&S unit in July 2003, Walsh returned the purchasing structure to how it was prior to Plaintiff's transfer. Such a short lived experiment that results in the termination of the "guinea pig" calls into question the basis for the transfer.

Finally, although the financial picture of the EP&S unit in the last half of 2003 supports Severn Trent's claims, the numbers alone are not as persuasive as a complete financial picture. In other words, the Court cannot determine whether the reduction in earnings in the last quarter of 2003 reflects a poor performance by the sales department or the purchasing department. The low revenue number justifies the reduction in force, but it does not explain why a member of the Purchasing Department, who has little effect on a

company's revenue, was terminated.[12]

This determination is a close call, especially given the fact that Walsh was responsible for the transfer and he was the person that initially hired Plaintiff. But see Waldron v. SL Indus., 56 F.3d 491, 496 n.6 (3d Cir. 1995) ("[W]here . . . the hirer and firer are the same and the discharge occurred soon after the plaintiff was hired, the defendant may of course argue to the factfinder that it should not find discrimination. . . . [It] is simply evidence like any other and should not be accorded any presumptive value."). But given the inconsistencies in the reasons for the transfer and termination and the short time between the two events, I must deny Severn Trent's motion for summary judgment on the race discrimination claims that relate to Plaintiff's transfer to the EP&S unit. Plaintiff has presented enough evidence to create a genuine issue of material fact as to the legitimacy of Severn Trent's nondiscriminatory reasons.

C. Elimination of Plaintiff's Position in January 2004

In assessing Plaintiff's race discrimination claims that relate to her termination by Severn Trent in January 2004 under McDonnell Douglas, the parties do not contest that Plaintiff can establish a prima face case of racial discrimination. In addition, Severn Trent has satisfied its burden. It put forth legitimate nondiscriminatory reasons for Plaintiff's termination that are detailed above. The parties only dispute whether Plaintiff

[12]Defendants include in their Appendix to their Statement of Undisputed Facts in Support of their Motion for Summary Judgment spreadsheets that contain financial information. See Defs.' App. to Defs.' State. of Undis. Facts, Ex. K, L. The exhibits are illegible.

has met her burden at this stage of the case by demonstrating the legitimate reasons offered by Severn Trent were a pretext for discrimination. In light of the discussion above and the interrelatedness between the transfer and the termination of Plaintiff, I will deny Severn Trent's motion for summary judgment on the race discrimination claims that relate to Plaintiff's termination. The inconsistencies that exist in the context of Plaintiff's transfer apply equally to Plaintiff's termination.

IV. Sex Discrimination Claims under Title VII and the PHRA

For the reasons stated above, Plaintiff's sex discrimination claims under Title VII and the PHRA, that relate to her reporting to Tischler in October 2002, are time-barred. See supra Part III.A.1, III.A.3. Therefore, I will grant Severn Trent's summary judgment motion on these claims.

As for the sex discrimination claims of Plaintiff that relate to her transfer and termination, the parties do not dispute Plaintiff's ability to establish a prima facie case. In addition, Severn Trent has articulated legitimate, nondiscriminatory reasons for the transfer and termination. The only unresolved question is whether Plaintiff has adduced enough evidence to show "the employer's proffered reasons were merely a pretext for discrimination, and not the real motivation for the unfavorable job action," under the third part of the McDonnell Douglas framework. Whereas the reasons proffered by Severn Trent are the same as the reasons under Plaintiff's race discrimination claims, the same contradictions and inconsistencies exist. Therefore, I will deny Severn Trent's motion for

summary judgment on the sex discrimination claims that relate to Plaintiff's transfer and termination.

V. Age Discrimination Claims under the ADEA and the PHRA

Plaintiff does not raise in her Amended Complaint an age discrimination claim relating to her October 2002 reporting change. See Am. Compl. Counts IV, VII. Plaintiff, however, attempts to assert a PHRA age discrimination claim relating to her reporting change in her Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. See Pl. Mem. of Law, at 37 n.6. Even if the court were to allow Plaintiff to amend her complaint by footnote, a claim under the PHRA for age discrimination relating to Plaintiff's reporting change would fail because it would be time-barred. See supra Part III.A.3.

As for Plaintiff's age discrimination claims relating to her transfer to the EP&S unit and eventual termination, the parties do not contest the first two parts of the McDonnell Douglas framework.[13] As for the third part of the McDonnell Douglas analysis, Plaintiff has presented enough evidence from which a factfinder could "reasonably disbelieve the employer's articulated legitimate reasons." Much like the race

[13] For a prima facie case under the ADEA, Plaintiff must show she "(1) is a member of the protected class, i.e. at least 40 years of age, 29 U.S.C. § 631(a), (2) is qualified for the position, (3) suffered an adverse employment decision, and (4) in the case of a demotion or discharge, was replaced by a sufficiently younger person to create an inference of age discrimination." Simpson v. Kay Jewelers, 142 F.3d 639, 644 (3d Cir. 1998). See Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 n.6 (3d Cir. 2003). See also Marzano v. Computer Sci. Corp., 91 F.3d 497 (3d Cir. 1996) (discussing the relaxation of the fourth prong of the prima facie case when the employee's layoff occurs in the context of a reduction in force).

and sex discrimination claims, the inconsistencies in Severn Trent's reasons for Plaintiff's transfer and termination raise a genuine issue of material fact. Accordingly, I will deny Severn Trent's motion for summary judgment on the age discrimination claims that relate to Plaintiff's transfer and termination.

Plaintiff and Severn Trent raise additional arguments under the second prong articulated in Jones, i.e., "pointing to evidence in the record which allows the fact finder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action." Jones v. School Dist., 198 F.3d 403, 413 (3d Cir. 1999). However, since the two prongs are not conjunctive, Plaintiff can survive summary judgment by satisfying only one of the prongs in Jones. Plaintiff satisfied the first prong by exposing the inconsistencies in Severn Trent's nondiscriminatory reasons. Therefore, this Court does not need to consider the second prong in deciding this motion.

CONCLUSION

Based on the foregoing, I will grant Defendants' motion for summary judgment in part and deny it in part. In particular, I will grant the motion with respect to the dismissal of STS, Inc. as a defendant and all discrimination claims relating to Plaintiff's reporting change in October 2002. I will deny the motion with respect to all discrimination claims relating to Plaintiff's July 2003 transfer to the EP&S unit and Plaintiff's termination in January 2004. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTINA V. WIMBERLY,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	**NO. 05-2713**
	:	
SEVERN TRENT SERVICES, INC.	**:**	
and SEVERN TRENT WATER	**:**	
PURIFICATION, INC.,	**:**	
Defendants.	**:**	

O R D E R

AND NOW, this 22nd day of August, 2006, upon consideration of Defendants' Motion for Summary Judgment (Document No. 22) and Plaintiff's response thereto (Docket No. 27), it is hereby **ORDERED** that the motion is **GRANTED** in part and **DENIED** in part.

The Defendants' motion for summary judgment is **GRANTED** with respect to (1) the dismissal of Severn Trent Services, Inc. as a defendant in this case and (2) all discrimination claims that relate to Plaintiff's reporting change in October 2002.

The Defendants' motion for summary judgment is **DENIED** with respect to (1) all discrimination claims that relate to Plaintiff's transfer to the EP&S unit in July 2003 and (2) all discrimination claims that relate to Plaintiff's termination in January 2004.

BY THE COURT:

/s/ Lawrence F. Stengel

LAWRENCE F. STENGEL, J.